IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO: 2993 of 2004

Between:

Smt C.Ramulamma, W/o Narasimulu, Sarpanch, Gram Panchayat,
Awancha Village, Narasapur Mandal, Medak District.

... PETITIONER

AND

1 The District Collector, Medak District.
2 The District Panchayat Officer, Medak District at Sanga Reddy.
3 The Mandal Parishad Development Officer, Narasapur.
4 Mohd.Bahadur Pasha, S/o Salam Miya, Upa-Sarpanch
Awancha Grampanchayat, Narsapur Mandal, Medak District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or Writs or order or direction declaring the order dated 27-1-2003 in File No.1602/2002/A4-pts passed by the 2nd respondent and order and decree dated 9-1-2004 in CMA No.6/2003 passed by the Principal District Judge, Medak District as being illegal, arbitrary, without jurisdiction by setting aside the same and be pleased to pass such other order.

Counsel for the Petitioner: MR.B.VIJAYSEN REDDY

Counsel for the Respondents 1 and 2: GP FOR PANCHAYAT RAJ & RURAL DEV.

Counsel for the Respondent No.3: Mrs. G. Jyothi Eswar

Counsel for the Respondent No.4: Mr. Jalli Kanakaiah

The Court at the admission stage made the following:

ORDER:

Petitioner was elected to the office of Sarpanch, Grampanchayat, Awancha village, Narsapur Mandal, Medak District. On a complaint being lodged by the fourth respondent that after the petitioner's election to the said office, she gave birth to a third child on 11-10-2002; hence she is disqualified to hold the office of Sarpanch in view of sub-section (3) of Section 19 of the A.P. Panchayat Raj Act, 1994 (for short 'the Act'), second respondent directed the third respondent to submit a report for taking necessary action. On the report so received, second respondent, by order dated
27-01-2003 intimated the petitioner about her disqualification for holding the office of Sarpanch with immediate effect.
Being aggrieved by the said intimation, petitioner preferred C.M.A.No.6 of 2003 before the Principal District Judge, Medak, Sangareddy, under Section 22 of the Act to set aside the intimation, who confirmed the intimation, after conducting an enquiry into the matter. Questioning the same, petitioner filed the present writ petition contending that she inadvertently filed the said C.M.A on the file of the Principal District Judge and the order passed by the second respondent as well as the District Judge are without jurisdiction and for setting aside the order passed by the second respondent, as confirmed by the District Judge.

2. Learned counsel for the petitioner contends that the second respondent has no jurisdiction to pass the order of disqualification and he is not the adjudicating authority under Section 22 of the Act. On such intimation if given, the Executive Authority at the discretion of Gram Panchayat or the Commissioner shall refer the matter to the District Judge for adjudication and only on such reference made by him, the District Judge gets jurisdiction under Section 22 of the Act to entertain the dispute and adjudicate the same and not otherwise, hence the same is liable to be set aside.

3. It is convenient to consider the above submissions in the light of the statutory provisions.

Section 19. Disqualification of candidates: -

1. x x x

2. x x x

3. A person having more than two children shall be disqualified for election or continuing as member:

   x x x

   Provided further that a person having more than two children (excluding the child if any born within one year from the date of such commencement) shall not be disqualified under this Section for so long as the number of children he had on the date of such commencement does not increase:

x x x

Section 20. Disqualification of members: -

Subject to the provisions of Section 22, a member shall cease to hold office as such if he –

a. is or becomes subject to any of the disqualifications specified in Sec.19:

b. x x x

22. Authority to decide questions of disqualifications of members: -

1. Where an allegation is made that any person who is elected as a member of a Gram

> Panchayat is not qualified or has become disqualified under Section 17, Section 18, Section 19 or Section 20 by any voter or authority to the executive authority in writing and the executive authority has given intimation of such allegation to the member through the District Panchayat Office and such member disputes the correctness of the allegation so made, or where any member himself entertains any doubt whether, or not he has become disqualified under any of those sections, such member or any other member may, and the executive authority, at the direction of the Gram Panchayat or the
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> Commissioner shall, within a period of two months from the date on which such intimation is given or doubt is entertained, as the case may be, apply to the District Court having jurisdiction over the area in which the office of the Gram Panchayat is situated for decision.

4. Learned counsel for the petitioner has not brought out any rules, which were framed, and the manner in which the reference is to be made to the District Judge by the authority. A reading of the impugned order passed by the District Panchayat Officer discloses that it is only an intimation given to the petitioner about her disqualification to hold office as she has given birth to a third child.

5. A Division Bench of this Court in ***A. ANJI REDDY V. G. YELLA REDDY*** categorically held that person aggrieved is a person who can seek reference to the Court. A reading of section 22 also envisages that on giving intimation by the Executive Authority, such member disputes the correctness of the allegation so made, such member, or the Executive Authority at the discretion of Gram Panchayat or Commissioner, apply to the District Court for a decision. It is

not in dispute that the petitioner admittedly filed an appeal against such intimation given to her. In absence of any procedure to be followed, the District Judge numbered it as an appeal and stayed the proceedings till the disposal of the appeal filed by the petitioner and after calling the entire records, observed that on the date of election petitioner was having two children, a daughter aged six years by name Jyothi and a son, aged about three years, by name Raju and subsequent to her election on 17-08-2001, i.e., about one year two months after the election, she gave birth to a male child and the said fact was admitted by the appellant. But, her contention that she gave her first child to her brother-in-law who was not having a male child, even assuming if she has given her first child in adoption to her brother-in-law, who was not having a male child, is taken into consideration, petitioner's first child is a daughter and her contention that she has given her first child to her brother-in-law, who was not having a male child is contrary to the evidence and it is not her case that she has given her second child, who is a male child, to her brother-in-law in adoption. In view of the same, the adoption pleaded by the petitioner is only to wriggle out from the disqualification. In absence of any other evidence pleaded to substantiate that she really gave her first child to her brother-in-law, the documentary evidence adduced by the appellant and the certificate dated 21-12-2002 issued by the Panchayat Secretary show that the appellant who gave birth to a child on 11-10-2002 is her third issue and the said birth is after election and so she incurred disqualification and accordingly confirmed the intimation holding that she is disqualified to hold the office.

6. Even in the present writ petition, petitioner has not denied the fact that she gave birth to third child after her election to the office of Sarpanch. In view of the same, the submission that District Judge cannot entertain the appeal on her filing is

devoid of merit. The reference can be in any form. The petitioner having submitted to the jurisdiction of the District Judge and once it is adjudicated by him that the petitioner incurred disqualification, even assuming that District Judge cannot entertain the appeal, she cannot hold the office on incurring disqualification. Since the petitioner invoked the certiorari jurisdiction, it is the bounden duty of the court to see if quashing of the impugned order will have the effect of restoration of the petitioner to the office. Admittedly, she incurred disqualification under sub-section (3) of Section 19 of the Act, the High Court should refuse to interfere with such order, which will amount to perpetuating the illegality as held by the Apex Court in ***GADDE VENKATESWAR RAO V. GOVERNMENT OF ANDHRA PRADESH*** and ***MAHARAJA CHINTAMANI SARAN NATH SHAHDEO V. STATE OF BIHAR.***

For the reasons aforementioned, I see no grounds to entertain the writ petition and it is accordingly dismissed at the admission stage. No costs.

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A. GOPAL REDDY, J

September 30, 2004

MRR

To:

1. The District Collector, Medak District.
2. The District Panchayat Officer, Medak at Sangareddy.
3. The Mandal Parishad Development Officer, Narsapur.

4. The Principal District Judge, Medak at Sangareddy.

5. Two C.C. s to the G.P. for Panchayat & Rural Development.

6. Two C.D. Copies.